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616594—61—1

In the Supreme Court of the United States

OCTOBER TERM, 1961

No. 396

C. J. D. RUDOLPH AND IRMA M. RUDOLPH, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the district court (R. 96–100; Pet. 31–35) is reported at 189 F. Supp. 2. The opinion of the court of appeals (Pet. 37–45) is reported at 291 F. 2d 841.

JURISDICTION

The judgment of the court of appeals was entered on June 27, 1961 (Pet. 45), and the petition for rehearing was denied on July 28, 1961 (Pet. 47). The petition for a writ of certiorari was filed on September 11, 1961. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

The taxpayer, an insurance agent in Dallas, Texas, was awarded by his employer an all-expense paid trip, for himself and his wife, to the Waldorf Astoria Hotel in New York City where his employer held a vacation-convention for those of its agents and salesmen who had satisfied specified performance standards. The questions are:

1. Whether the amounts paid by the employer, on behalf of the taxpayer and his wife, for their transportation to New York and for their accommodations, meals, and entertainment there and the amounts paid to the taxpayer for additional meals in New York constituted gross income to the taxpayer.

2. Whether the expenses incurred by the taxpayer and his wife, for transportation to New York and for accommodations, meals, and entertainment there were deductible ordinary and necessary business expenses of the taxpayer or were nondeductible personal expenses.

STATUTES AND REGULATIONS INVOLVED

Sections 61, 62, 74, 162, and 262 of the Internal Revenue Code of 1954 and Treasury Regulations on Income Taxes (1954 Code), Sections 1.61-1, 1.61-2, and 1.162-2 appear in the Appendix, *infra*, pp. 11–16.

STATEMENT

The taxpayer, C. J. D. Rudolph,[1] is an insurance agent selling for Southland Life Insurance Company. During 1956, he was a resident of Dallas, Texas, where

[1] Mr. Rudolph and his wife filed a joint return for 1956. Mr. Rudolph, however, is referred to as "the taxpayer."

the home office of the company was located. In 1956 the taxpayer qualified to attend the company's convention in New York City and also to bring his wife by selling the requisite amount of insurance as determined by the company. The convention trip consumed approximately five days. Of this time, one morning session was devoted to a business meeting, followed by a business luncheon. The remaining time was devoted to travel, sightseeing, entertainment, fellowship or free time[2] (R. 16, 96–97, 114; Pet. 32).

The admitted value of the all-expense paid trip from Dallas to New York City, taken by the taxpayer and his wife in 1956 and paid for by the company, was $560. The taxpayer and his wife failed to report this amount on their joint income tax return for 1956 and the Commissioner assessed a deficiency in income tax in the amount of $126.90, which then was paid with interest (R. 96–97; Pet. 31).

In the subsequent suit for refund the district court held that the trip had been earned by the taxpayer, was in the nature of a bonus, reward, and compensation for a job well done, and that, as compensation,

[2] The convention schedule in New York, set forth in the program published by the company (R. 104–109), commenced with a sightseeing trip to the Waldorf Astoria and included a single morning business session, a group luncheon at the Waldorf at which the speaker was Dr. Norman Vincent Peale (R. 111–113), a sightseeing tour of Manhattan, breakfast and fashion show for the women, and such other "Company-Arranged Convention Events" as the Christmas show at Radio City Music Hall, an evening at the Copacabana Night Club, radio and television shows, tours of the Empire State Building, Rockefeller Center, and radio and television studios, all of which were available to the taxpayer and his wife at company expense.

the $560 value of the trip properly was included in the income of the taxpayer and his wife. The district court further held that since the trip was primarily a pleasure trip in the nature of a vacation, its cost was a personal expense of the taxpayer and his wife and therefore was not deductible by them (R. 99–100; Pet. 34–35).

The court of appeals (Judge Brown dissenting) affirmed, *per curiam,* upon the facts set forth in the opinion of the district court and upon the basis of its opinion in *Patterson* v. *Thomas,* 289 F. 2d 108 (C.A. 5) (Pet. 37–45; 49–74).

ARGUMENT

This case involves the same issues as *Patterson* v. *Thomas* 289 F. 2d 108 (C.A. 5), certiorari denied, October 9, 1961 (No. 109, this Term). The determination of the courts below that the convention trip was primarily for the pleasure of the taxpayer and his wife, rather than for business, and therefore that its value constitutes gross income and is not deductible from gross income as business expenses, depends upon the particular facts of this case.[4] These concurrent findings are final in the absence of a very exceptional showing of error. *Comstock* v. *Group of Investors,* 335 U.S. 211, 214. On this record, the district court's findings were certainly not clearly erroneous. There are no conflicting decisions and, as in the *Thomas*

[4] Judge Brown, who dissented in both cases, agreed in *Thomas* (pet. 59) and apparently does here, that the amounts in dispute constituted gross income.

case,[4] there is no need for further review by this Court.

1. Section 61 of the Internal Revenue Code of 1954, Appendix, *infra*, p. 11, defines gross income as including "all income from whatever source derived * * *." This definition was intended by Congress to be "all-inclusive" (*Commissioner* v. *Glenshaw Glass Co.*, 348 U.S. 426, 432) and clearly is broad enough in scope to include as income amounts paid by a corporation in forms other than cash to employees who have done outstanding work. See Treasury Regulations on Income Tax (1954 Code), Sections 1.61–1 and 1.61–2(d) (1) and (3), Appendix, *infra*, pp. 13–14.

In the present case the taxpayer qualified to receive from his employer an all-expense paid trip for himself and his wife by satisfying previously established performance standards in his work. The payments do not come within any statutory exemption from gross income, and there is no provision in the revenue laws for any non-statutory exemption by analogy such as taxpayer suggests (Pet. 15–16).

Moreover, Section 74 of the 1954 Code, Appendix, *infra*, pp. 12–13, provides that amounts received as prizes and awards are included in gross income. As the district court found (Pet. 34), the trip in issue here was a "bonus, reward, and compensation for a job well done."

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[4] In *Thomas*, the taxpayer did not petition for review of the holding that the cost of the trip paid by the company constituted gross income.

2. Section 62(2) of the 1954 Code, Appendix, *infra*, pp. 11–12, provides that an employee may deduct from his gross income expenses for travel, meals, and lodging "paid or incurred by the taxpayer, in connection with the performance by him of services as an employee." Section 62(2) makes these expenses deductible only insofar as they constitute "ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business * * *" under Section 162(a), Appendix, *infra*, pp. 12–13. That is, the expenses must be "reasonable and necessary in the conduct of the taxpayer's business and directly attributable to it * * *." Treasury Regulations on Income Tax (1954 Code), Section 1.162–2, Appendix, *infra*, pp. 15–16. Travel expenses for personal activities are not deductible. Section 262, Appendix, *infra*, p. 13; Treasury Regulations on Income Tax (1954 Code), Section 1.262–1.

When the travel takes place for both business and personal reasons, the expense of travel to and from the place where the activity takes place is not deductible if the primary purpose of the trip is personal. Expenses incurred at the destination and properly allocable to the taxpayer's trade or business are, however, deductible. Treasury Regulations on Income Tax (1954 Code), Section 1.162–2(b)(1). Similarly, the expenses of a taxpayer in attending a convention or meeting may be deductible if incurred for business purposes but not if the convention is for social, political, or similar purposes. Treasury Regulations on Income Tax (1954 Code), Section 1.162–2(d). Thus, it is undisputed (Pet. 21, 54) that the determination

as to deductibiiity depends upon whether the primary purpose of the trip was business or pleasure.

The nature of the trip must be determined from the individual taxpayer's point of view and is not established by the viewpoint of his employer. *Patterson* v. *Thomas, supra,* 289 F. 2d at 112–113 (C.A. 5) (Pet. 54–55). In determining the purpose of the trip in the *Thomas* case, *supra,* the court of appeals considered factors (289 F. 2d at 113–114; Pet. 55–58) closely analogous to the following circumstances which it found require the same result in this case (Pet. 37–38):

(a) During the entire convention period of about three days in New York City, the taxpayer attended only one business meeting, lasting approximately two and one-half hours, and a group luncheon immediately thereafter.[5] The program was planned so that petitioner could spend the remainder of his time taking advantage of the many recreational and entertainment activities available in New York City of the type usual on a vacation.[6] The taxpayer's selection of entertainment during much of this time was entirely within his own discretion. The taxpayer took ad-

[5] Treasury Regulations on Income Tax (1954 Code), Section 1.162–2(b)(2) state (Appendix, *infra,* pp. 15–16): "The amount of time during the period of the trip which is spent on personal activity compared to the amount of time spent on activities directly relating to the taxpayer's trade or business is an important factor in determining whether the trip is primarily personal."

[6] See *supra,* p. 3, note 2, as to the various entertainment available to the taxpayer during the trip.

vantage of these opportunities. He and his wife had looked forward to and planned the trip (R. 34–39, 104–107).

(b) The convention was sponsored and paid for by the taxpayer's employer and the only participants were taxpayer's co-employees who had attained pre-established performance standards (R. 22, 30, 40, 44, 54–55, 114–119).

(c) The convention was held at a luxury hotel in New York City, at an unnecessary distance, with respect to business purposes, from the home office of the company in Dallas, Texas, and the homes of the convention participants (R. 98–99, 111; Pet. 33–34).

(d) The attitude of the company was that the convention trip "was planned with your [the agents'] pleasure in mind." In the convention program the qualifying agents were urged to "ENJOY YOURSELF" (Plaintiff's Ex. 10).[7]

These factors clearly support the determination of the courts below that the convention trip was primarily for the pleasure of the taxpayer and his wife and not for business purposes. The taxpayer was not entitled to deduct his travel expenses since his trip was for personal purposes. Sections 162(a) and 262 of the 1954 Code; Treasury Regulations on Income Tax (1954 Code), Section 1.162–2(b) (1), (d). Similarly, since only a negligible amount of the taxpayer's time in New

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[7] A portion of Plaintiff's Exhibit 10, the convention program, is printed (R. 104–107). Additional portions, including the quoted portion of the welcoming statement of the company vice-president, were printed as Appendix B to the government's brief below.

York was devoted to business, none of his expenses there were deductible. Treasury Regulations on Income Tax (1954 Code), Section 1.162-2(b)(1).

3. In the case of his wife, the taxpayer's expenses at the convention were incurred solely for the purpose of providing her with a vacation at a luxury hotel in New York City. She was not an employee of her husband or of the company, and her husband could have attended the convention without her (R. 40-41, 92). She occupied herself in New York with the tourism and entertainment usual on a vacation (R. 34-35, 38-39, 104-107). The record does not indicate that she spent any of her time in New York on work concerned with her husband's business, and at the trial of this case she was unable to think of anything she had learned about her husband's business which she had not known prior to the 1956 convention (R. 93). Since her presence at the convention had no bona fide business purpose from the viewpoint of the taxpayer—as opposed to any benefit her presence may have had from the standpoint of the Company—the deductions claimed for her expenses were properly denied. *Patterson* v. *Thomas, supra,* 289 F. 2d at 114 (Pet. 59); Treasury Regulations on Income Tax (1954 Code), Section 1.162-2(c). See also *Silverman* v. *Commissioner,* 253 F. 2d 849 (C.A. 8); Rev. Rul. 55-57, 1955-1 Cum. Bull. 315; Rev. Rul. 56-168, 1956-1 Cum. Bull. 93.

CONCLUSION

For the foregoing reasons, we respectfully submit that the petition for a writ of certiorari should be denied.

ARCHIBALD COX,
Solicitor General.
JOHN B. JONES, JR.,
Acting Assistant Attorney General.
I. HENRY KUTZ,
NORMAN H. WOLFE,
Attorneys.

OCTOBER 1961.

APPENDIX

Internal Revenue Code of 1954:

SEC. 61. GROSS INCOME DEFINED.

(a) *General Definition.*—Except as otherwise provided in this subtitle, gross income means all income from whatever source derived, including (but not limited to) the following items:

(1) Compensation for services, including fees, commissions, and similar items;

(2) Gross income derived from business;

* * * * *

SEC. 62. ADJUSTED GROSS INCOME DEFINED.

For purposes of this subtitle, the term "adjusted gross income" means, in the case of an individual, gross income minus the following deductions:

(1) *Trade and business deductions.*—The deductions allowed by this chapter (other than by part VII of this subchapter) which are attributable to a trade or business carried on by the taxpayer, if such trade or business does not consist of the performance of services by the taxpayer as an employee.

(2) *Trade and business deductions of employees.*

(A) *Reimbursed expenses.*—The deductions allowed by part VI (sec. 161 and following) which consist of expenses paid or incurred by the taxpayer, in connection with the performance by him of services as an employee, under a reimbursement or other expense allowance arrangement with his employer.

(B) *Expenses for travel away from home.*—The deductions allowed by part VI (sec. 161 and following) which consist of expenses of travel, meals, and lodging while away from

home, paid or incurred by the taxpayer in connection with the performance by him of services as an employee.

(C) *Transportation expenses.*—The deductions allowed by part VI (sec. 161 and following) which consist of expenses of transportation paid or incurred by the taxpayer in connection with the performance by him of services as an employee.

(D) *Outside salesmen.*—The deductions allowed by part VI (sec. 161 and following) which are attributable to a trade or business carried on by the taxpayer, if such trade or business consists of the performance of services by the taxpayer as an employee and if such trade or business is to solicit, away from the employer's place of business, business for the employer.

* * * *

SEC. 74. PRIZES AND AWARDS.

(a) *General Rule.*—Except as provided in subsection (b) and in section 117 (relating to scholarships and fellowship grants), gross income includes amounts received as prizes and awards.

(b) *Exception.*—Gross income does not include amounts received as prizes and awards made primarily in recognition of religious, charitable, scientific, educational, artistic, literary, or civic achievements, but only if—

(1) the recipient was selected without any action on his part to enter the contest or proceeding; and

(2) the recipient is not required to render substantial future services as a condition to receiving the prize or award.

SEC. 162. TRADE OR BUSINESS EXPENSES.

(a) *In General.*—There shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including—

(1) a reasonable allowance for salaries or other compensation for personal services actually rendered;

(2) traveling expenses (including the entire amount expended for meals and lodging) while away from home in the pursuit of a trade or business; and

(3) rentals or other payments required to be made as a condition to the continued use or possession, for purposes of the trade or business, of property to which the taxpayer has not taken or is not taking title or in which he has no equity.

* * * * *

SEC. 262. PERSONAL, LIVING, AND FAMILY EXPENSES.

Except as otherwise expressly provided in this chapter, no deduction shall be allowed for personal, living, or family expenses.

Treasury Regulations on Income Taxes (1954 Code):

SEC. 1.61–1. *Gross income.*—(a) *General definition.*—Gross income means all income from whatever source derived, unless excluded by law. Gross income includes income realized in any form, whether in money, property, or services. Income may be realized, therefore, in the form of services, meals, accommodations, stock, or other property, as well as in cash. Section 61 lists the more common items of gross income for purposes of illustration. For purposes of further illustration, § 1.161–14 mentions several miscellaneous items of gross income not listed specifically in section 61. Gross income, however, is not limited to the items so enumerated.

* * * * *

SEC. 1.61–2. *Compensation for services, including fees, commissions, and similar items.*—(a) *In general.*—(1) Wages, salaries, commissions paid salesmen, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips,

bonuses (including Christmas bonuses), termination or severance pay, rewards, jury fees, marriage fees and other contributions received by a clergyman for services, pay of persons in the military or naval forces of the United States, retired pay of employees, pensions, and retirement allowances are income to the recipients unless excluded by law. Several special rules apply to members of the Armed Forces, Coast and Geodetic Survey, and Public Health Service of the United States; see paragraph (b) of this section.

(2) The Internal Revenue Code of 1954 provides special rules including the following items in gross income:

* * * * *

(iii) Prizes and awards, see section 74 and the regulations thereunder.

* * * * *

(d) *Compensation paid other than in cash.*—(1) *In general.*—If services are paid for other than in money, the fair market value of the property or services taken in payment must be included in income. If the services were rendered at a stipulated price, such price will be presumed to be the fair market value of the compensation received in the absence of evidence to the contrary.

* * * * *

(3) *Meals and living quarters.*—The value of living quarters or meals which an employee receives in addition to his salary constitutes gross income unless they are furnished for the convenience of the employer and meet the conditions specified in section 119 and the regulations thereunder. For the treatment of rental value of parsonages or rental allowance paid to ministers, see section 107 and the regulations thereunder; for the treatment of statutory subsistence allowances received by police, see section 120 and the regulations thereunder.

* * * * *

SEC. 1.162–2. *Traveling expenses.*—(a) Traveling expenses include travel fares, meals and lodging, and expenses incident to travel such as expenses for sample rooms, telephone and telegraph, public stenographers, etc. Only such traveling expenses as are reasonable and necessary in the conduct of the taxpayer's business and directly attributable to it may be deducted. If the trip is undertaken for other than business purposes, the travel fares and expenses incident to travel are personal expenses and the meals and lodging are living expenses. If the trip is solely on business, the reasonable and necessary traveling expenses, including travel fares, meals and lodging, and expenses incident to travel, are business expenses. For the allowance of traveling expenses as deductions in determining adjusted gross income, see section 62(2)(B) and the regulations thereunder.

(b) (1) If a taxpayer travels to a destination and while at such destination engages in both business and personal activities, traveling expenses to and from such destination are deductible only if the trip is related primarily to the taxpayer's trade or business. If the trip is primarily personal in nature, the traveling expenses to and from the destination are not deductible even though the taxpayer engages in business activities while at such destination. However, expenses while at the destination which are properly allocable to the taxpayer's trade or business are deductible even though the traveling expenses to and from the destination are not deductible.

(2) Whether a trip is related primarily to the taxpayer's trade or business or is primarily personal in nature depends on the facts and circumstances in each case. The amount of time during the period of the trip which is spent on personal activity compared to the amount of time spent on activities directly relating to the taxpayer's trade or business is an

important factor in determining whether the trip is primarily personal. If, for example, a taxpayer spends one week while at a destination on activities which are directly related to his trade or business and subsequently spends an additional five weeks for vacation or other personal activities, the trip will be considered primarily personal in nature in the absence of a clear showing to the contrary.

(c) Where a taxpayer's wife accompanies him on a business trip, expenses attributable to her travel are not deductible unless it can be adequately shown that the wife's presence on the trip has a bona fide business purpose. The wife's performance of some incidental service does not cause her expenses to qualify as deductible business expenses. The same rules apply to any other members of the taxpayer's family who accompany him on such a trip.

(d) Expenses paid or incurred by a taxpayer in attending a convention or other meeting may constitute an ordinary and necessary business expense under section 162 depending upon the facts and circumstances of each case. No distinction will be made between self-employed persons and employees. The fact that an employee uses vacation or leave time or that his attendance at the convention is voluntary will not necessarily prohibit the allowance of the deduction. The allowance of deductions for such expenses will depend upon whether there is a sufficient relationship between the taxpayer's trade or business and his attendance at the convention or other meeting so that he is benefiting or advancing the interests of his trade or business by such attendance. If the convention is for political, social or other purposes unrelated to the taxpayer's trade or business, the expenses are not deductible.

(e) Commuters' fares are not considered as business expenses and are not deductible.

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